



STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LOCAL 394, INTERNATIONAL BROTHERHOOD
 OF POLICE OFFICERS

 Complainant

 and

 CITY OF MANCHESTER
 POLICE DEPARTMENT

 Respondent

CASE NO, P-0706;3
 DECISION NO, 81-72

BACKGROUND

This unfair labor practice complaint case was brought before the Board by the Union representing the police officers in Manchester, A contract was in effect between the parties at all times relevant to the dispute which will be cited later in this decision, effective for the period January 1, 1978 - December 31, 1979.

The complaint stated that on or about October 30, 1978 the Chief of Police issued new rules and regulations governing the conduct of members of the Local 394. Among the items changed from previous rules was the inclusion of the requirement that members submit to polygraph examinations under certain circumstances during disciplinary or investigatory procedures. The Union objected to the establishment of this rule as a violation of RSA 273-A:5 (e), (h), and (i) as a refusal to bargain over mandatory subjects of negotiations, the violation of a previously established agreement, and the establishment of a rule violating an agreement.

The Board held a hearing and accepted briefs from the parties concerning their positions.

FINDINGS OF FACT AND RULINGS OF LAW

It is basic to New Hampshire labor relations as established by RSA 273-A and this Board's decisions and those of the New Hampshire Courts, that management is afforded wide discretion in exercising its functions of management. Indeed, this Board will not and cannot substitute its opinion of what is a wise act or decision of management. It is management's right to exercise its discretion on matters left to it by law or contract, subject only to the requirements of other statutes. This decision and the Board have not considered and have not been asked to consider whether the requirement of a lie detector test can be imposed under state statute, federal statute or state or federal constitutional rules. It is up to the courts to so decide, if asked. Rather, this Board has stayed within the bounds of RSA 273-A and the existing contract to decide this case.

The contract negotiated between the parties and signed and ratified by them, including the membership affected by the rule changes, states in relevant part, as follows:

Article II; Management's Rights: The (Police) Commission will continue to have, whether exercised or not, all the rights, powers and authority heretofore existing...take disciplinary action...issue and enforce rules and regulations...

Notwithstanding this agreement that new rules and regulations could be issued by the commission unilaterally on subjects within its authority, including discipline, the commission invited input by the union before issuing new rules and according to testimony at hearing, distributed proposed rules. There is question whether the union was aware of the specific change complained about, however.

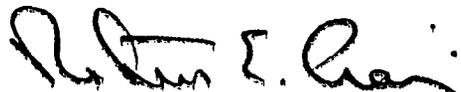
In the context of the existing contract, and the agreed allocation of responsibilities thereunder, the Board cannot say that the adoption of the lie detector rule, if otherwise legal, was an unfair labor practice. Had the issue been raised in the larger context of general contract negotiations for a new agreement, the Union would have had a better case for discussion and negotiations. However, that is the question for another day and was not presented to the Board. The Board would comment to the parties, however, that in matters of substance and extreme sensitivity such as this, it is often beneficial to fully and openly discuss the issues, whether or not required, so that there is no misunderstanding about the purpose for or effect of a proposed rule.

The union has pressed the Board to state that the adoption of the rule in question was a fundamental change in the conditions of employment of the members of the bargaining unit and that, regardless of the contract language, it is a subject requiring negotiations. The Board is not unsympathetic to that argument, given the tone and aura apparently created by the adoption of the rule. However, when the emotion of the matter is removed, it must be viewed as an adjustment to a rule in an area of management discretion, in this case.

DECISION

The Board issues the following decision:

Having found no unfair labor practice, the complaint is dismissed. This decision is restricted to the facts and contract in this case.



ROBERT E. CRAIG, Chairman
FOR: PUBLIC EMPLOYEE LABOR RELATIONS BD.

December 28, 1981

By unanimous vote of the members present at the time of hearing.